

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 – Room 7008
Cincinnati, OH 45201

Date: JAN 27 2004

UIL: 501.00-00

Employer Identification Number:

Person to Contact – I.D. Number:

Contact Telephone Numbers:

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

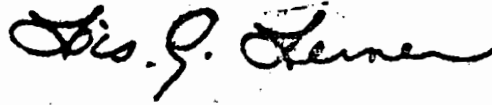
You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

DR-063-2004

20044042E

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. J. Lerner".

Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Enclosure I
Publication 892
Form 6018

Enclosure I

Issue:

Does an organization that uses a quality inspection program that certifies its member's establishments and then promotes the member's establishments through various advertising media qualify for exemption under section 501(c)(6) of the Code? Is the promotion of the member's establishments the performance of particular services for individual persons?

Facts:

You were incorporated on _____ under the laws of the _____. The Certificate of Incorporation states the corporation is organized for the following purpose:

Article III of the organization's Bylaws describes the organization's membership requirements. The organization's membership is divided into

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.

i.

j.

k.

l.

Affiliate membership: Any business or organization that is associated with the _____ shall become an affiliate member upon approval of application and full payment of annual dues. Affiliate members are eligible to attend the biannual meetings but will not have voting privileges nor may they serve on the Board of Trustees but they may serve in an advisory position.

Membership: Any individual who may be interested in pursuing a _____ keeping shall become an aspiring member upon full payment of annual dues. This includes any establishment under construction and not yet up and running. members are eligible to attend the biannual meetings but will not have voting privileges nor may serve on the Board of Trustees. Should an _____ that member must immediately apply for inspection and full membership status and pay appropriate dues.

Honorary membership: Honorary memberships shall be approved by the Board of Directors as special recognition to former member _____ and affiliates and share the same privileges and restrictions as affiliate memberships. Honorary members have no voting privileges and are exempt from dues.

Per your Form 1024 application, page 2, Part II - Activities/Operational Information, you indicated, the purpose of this Association is to promote and market high quality, inspected and approved _____ establishments in _____ The Association objectives include the following:

- a. To encourage high standards of quality, cleanliness, safety, security and professionalism among our members for the good of all guest and all members.
- b. To educate members about legislative, health, marketing, financial and other issues which affect

- c. To provide cooperative marketing and promotion through a website, banner program, brochure inclusion program, advertising and distribution of a member directory.
- d. To participate in other functions, which advance the interests of the Association.

Your letter dated _____ indicates the _____ was formed for the primary purpose of raising the level of experience for travelers in _____. Specifically, the association objectives are to establish strict standards of quality, cleanliness, safety, security and professionalism among your members so that travelers to such _____ will receive improved service and be provided a top quality travel experience. Membership in the association is open to all _____ establishments that meet those standards. In order to prove that a member qualifies for admission, each member must submit to a quality inspection upon entrance into the organization and biannually thereafter. The inspection process is critical to the _____ because the parameters of the inspection insure high level of standards in order to provide the guest with excellent service. The criteria required to pass the inspection is defined in the attached inspection checklist (Exhibit A). Also, as part of our service, we work with _____ that do not meet our standards to enable them to be better Innkeepers which in turn enhances the traveler's stay.

Your letter dated _____ also states in addition to establishing quality standards, your organization acts as consultants to the _____ in understanding the _____ Industry. For instance, you collaborate with the State with respect to revising the fire & safety codes applicable to _____. You not only act as consultants, but are responsible for educating your membership concerning legal, health, safety and issues related to State and Federal regulations to your membership. Twice a year you hold membership meetings to present pertinent related information to your membership. At the General Meeting held in _____ presented your membership with the revised retail food guidelines and how they will impact the _____. In addition, _____ of the _____ gave an update on _____.

Your letter dated _____ further indicates as far as your brochure and website, they were not meant to give our members unfair advantage over non-members. They are used to inform travelers to _____ of those _____ that meet the stringent standards established by the organization, therefore raising the level of their travel experience. To reiterate, the brochure and website are available to any _____ that meets the criteria for entrance into the Association.

Your letter dated _____ indicates membership fees are used solely to achieve the primary objectives of the organization. The Board of Directors is a volunteer membership that dedicates their time for the good of the organization. There has never been an instance of personal gain to any member of the organization.

Your letter dated _____ also indicated there are at least _____ that participate in an inspection program, have similar objectives to the _____ and also maintain a website which advertises the inspected inns (Exhibit B). We have contacted each organization and have received responses back from: _____ and _____ All of these State Associations have been granted Non-Profit Status by the Internal Revenue Service.

Your letter dated _____ indicates the organization referenced in Revenue Ruling 65-14 cannot be compared to the _____ for the following reasons: (1) The primary source of income for the organization defined in the revenue ruling was derived from the _____ According to publication 557, organizations exempt under 501(c)(6), the organizations primary source of support must be derived from membership dues and other income from activities substantially related to its exempt purpose. The _____ primary source of revenue is membership dues, inspection fees and other income related to your primary purpose; and (2) The principal activity for the organization defined in the revenue ruling was the _____ Your primary purpose is to establish strict standards of quality, cleanliness, safety, security and professionalism in the _____ in _____ thereby increasing the level of travel experience to _____ travelers in an effort to promote tourism in the _____ Membership is open to all _____ establishment in so far as they meet the strict standards. Members meeting those standards are included in your trade publication, which is produced annually.

Your letter dated _____ also states, unlike the organization referenced in Revenue Ruling 76-409, the _____ is open to all _____ entities in the _____ that meet the established standards. The primary purpose of your organization is to improve the industry as a whole.

Your letter dated August 6, 2003, further indicates you believe that you have met all qualifications required to be classified as a 501(c)(6) organization and respectfully request that we reconsider our position concerning a favorable determination on your non-profit status.

Your letter dated _____ also indicates the Service has also supported your position with past decisions. Specifically, there are _____ that run inspected programs identical to yours including maintaining a website publicizing the inspected inns. Therefore, you are not requesting special treatment just consistent application of the regulations across the board. In conclusion, you believe that you meet all qualifications as a 501(c)(6) business league and are asking us to reconsider our position or provide you with appeal options and the address for the IRS Problem Resolution Division.

On page 2, of your Form 1024, you indicated the organization's sources of financial support (in order of size) include membership dues, website advertising, gift certificate commissions, and brochure inclusion program.

Based on the financial information you provided on page 5, of your Form 1024, the organization's income for years _____ was derived from membership dues, website maintenance fee, website banner/advertising, brochure inclusion program, open house tours, cookbook sales, brochure cover lottery, general meeting fees, expired gift certificates, and commission on gift certificates.

Based on the financial information you provided on page 5, of your Form 1024, the organization's expenditures for years _____ included: _____

Law:

Section 501(c)(6) of the Code provides for the exemption from Federal income tax of business leagues not organized for profit, no part of the net earnings of which inures to the benefit of any shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations describes a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul. 55-444, 1955-2 CB 258, detailed an organization formed to promote the business of a particular industry and which carried out its purposes primarily by conducting a general advertising campaign to encourage the use of products and services of the industry as a whole. It was entitled to exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code. The key finding in the Revenue Ruling was that the purpose of the organization was to promote the industry as a whole, and not to serve individual members. Most of the benefits to members of the organization were indirect and accrued alike to members and other persons in the industry.

Revenue Ruling 64-315, 1964-2 CB 147, detailed an association of merchants whose businesses constituted a shopping center that engaged exclusively in advertising in various newspapers and on television and radio in order to attract customers to the shopping center. The advertising contained the names of members and their merchandise. The organization was not entitled to exemption from Federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 65-14, 1965-1 CB 236, held that an organization formed to promote the tourist industry in its area and whose principal activity was the publication of a yearbook

consisting largely of paid advertisements for its members was not entitled to exemption from Federal income tax under section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 67-77 1, 1967-1 CB 138, detailed an organization composed of dealers in a certain make of automobile in a designated area that was organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of a particular make of automobile. The organization was found to be performing particular services for its members and was not entitled to exemption from Federal income tax as a business league under section 501(c)(6) of the Internal Revenue Code of 1954.

Revenue Ruling 70-80, 1970-1 CB 130, held a nonprofit trade association of manufacturers whose principal activity was the promotion of its members' products under the association's registered trademark did not qualify for exemption under section 501(c)(6) of the Code.

Revenue Ruling 70-187, 1970-1 CB 13, held that a nonprofit organization formed by manufacturers of a particular product to conduct a program of testing and certification of the product to establish acceptable standards within the industry as a whole qualified for exemption under section 501(c)(6) of the Code. The organization was formed by manufacturers of the particular product to establish acceptable standards for and a fair advertising description of the product. The organization furnished interested manufacturers specifications setting forth minimum quality and performance standards and conducted a program of testing and certification based on these standards. It permitted manufacturers to display its "seal of acceptance" on all product models that had been certified as meeting its standards. The organization offered its program to all interested manufacturers without requiring anyone to become a member. Approximately 90% of the manufacturers in the industry participated in the program and the organization fixed its charges sufficient only to defray the cost of the program.

Revenue Ruling 76-409, 1976-2 CB 154, details a nonprofit organization of individuals in the business of furnishing finance adjusting services, which assigned exclusive franchise areas to its members and published and distributed to their potential customers a directory containing members' names and addresses, was performing particular services for its members and did not qualify for exemption under section 501(c)(6) of the Code.

Evanston-North Shore Board of Realtors v. The United States held that a real estate board operating a multiple listing service as their principal activity did not qualify for tax exemption because the listing service benefited member brokers by bringing buyers and sellers together to facilitate sales of property. The operation of the listing service was not an incidental activity of the board, since 61% of its gross income was derived from such service and net profits from such service were 27% to 40% of the board's other gross income.

Builders' Exchange of Texas, Inc. v. Commissioner held that a corporation dealing with people in the construction industry was not an exempt organization as a business league.

Failure to qualify as such resulted from the organization's carrying on its activities primarily for benefit of its members only, as opposed to that of the public or the construction industry as a whole.

In Automotive Electric Association v. Commissioner business league exemption was denied an association that published catalogues that listed only products manufactured by its membership.

Application of Law:

Section 1.501(c)(6)-1 of the Income Tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Unlike the types of organizations described in the Section 1.501(c)(6) of the Income Tax Regulations, your organization's activities are not directed towards the improvement of business conditions of one or more lines of business but your activities are primarily geared towards the performance of particular services for your members. Therefore, your organization does not meet the requirements for tax exemption under Section 1.501(c)(6) of the Income Tax Regulations.

Unlike the organization in Revenue Ruling 55-444 your organization grants all of its benefits to members of your organization and does not benefit other persons in the industry.

Your organization is similar to the organization described in Revenue Ruling 70-80, because your organization is a nonprofit association in the Bed & Breakfast industry that establishes strict standards of quality, cleanliness, safety, security and professionalism for your member's establishments. Your association's principal activity is the promotion of its member's Bed & Breakfast establishments through various advertising media (i.e., website, directory, brochures, etc.)

Membership in your association is open to all that meet those standards. In order to prove that a member qualifies for admission, each member must submit to a quality inspection upon entrance into the organization and biannually, thereafter. Only members receive the association's seal of approval, even though, nonmember's establishments meet the association's strict standards of quality.

The inspection program (seal of approval) is promoted by your organization in a way that is intended to give your members a competitive advantage over others in the same industry by extolling the superior quality of your member's establishments. Like the

organization described in Revenue Ruling 70-80, you do not qualify for tax exemption under section 501(c)(6) of the Code because your inspection program (seal of approval) is not directed towards the improvement of business conditions of the industry as a whole but is the performance of particular services for members.

Your organization is similar to the organization described in Revenue Ruling 76-409, because your organization's principal activity is the publication and distribution of an annual directory consisting almost entirely of members' names, addresses, and telephone numbers. Like the organization described in the revenue ruling, you do not qualify for tax exemption under section 501(c)(6) of the Code because the publication and distribution of a directory containing the names and addresses of your members constitutes advertising for the members listed, and is, therefore, the performance of particular services for such members rather than an activity aimed at the improvement of general business conditions of the industry as a whole.

Your organization is similar to the organization described in Revenue Ruling 65-14, because your primary activity is the publication of a website and directory consisting of advertisements for your members and is thus considered the performance of particular services for such individuals, rather than an activity aimed at the improvement of general business conditions. Like the organization described in the revenue ruling, you do not qualify for tax exemption under section 501(c)(6) of the Code because the publication of a website and directory containing listings of the names of individual members constitutes advertising for the members and is thus considered the performance of particular services for such members, rather than the improvement of business conditions of the industry as a whole.

Your organization is similar to the organization described in Revenue Ruling 64-315, because your primary activity appears to be the marketing and promotion of member's businesses. Like the organization described in the revenue ruling, you do not qualify for tax exemption under section 501(c)(6) of the Code because marketing and promoting your member's establishment constitutes the performance of particular services for members rather than an activity directed to the improvement of business conditions of the industry as a whole.

Your organization is similar to the organization described in Revenue Ruling 67-77, because your organization is performing services for its members by advertising your member's Like the organization described in the revenue ruling, you do not qualify for tax exemption under section 501(c)(6) of the Code because instead of engaging in activities for the improvement of business conditions in the a whole, you are performing particular services for your members by advertising their

Your organization is different from the organization described in Revenue Ruling 70-187, because in order for an organization to receive your "seal of approval" after passing your inspection program the organization must become a member of your organization. Unlike the organization described in the revenue ruling, you do not qualify for tax

exemption under section 501(c)(6) of the Code because your activities are not directed toward the improvement of business conditions in the industry as a whole but rather the performance of particular services for members.

Your organization is similar to the organization described in Evanston-North Shore Board of Realtors v. The United States, because your organization is operating a website advertising listing and a brochure directory listing which lists the names, addresses, telephone number, email address, website, number of rooms, prices, etc., of your member's businesses. Like the organization described in the court case, you do not qualify under section 501(c)(6) of the Code because the operation of a website advertising listing and brochure directory listing cannot be regarded as directed to the improvement of business conditions in the _____ as a whole, but rather constitutes the performance of particular services for members listed on the website and in the directory.

Your organization is similar to the organization described in Builders' Exchange of Texas, Inc. v. Commissioner, because your organization carries on activities primarily for the benefit of your members only, as opposed to that of the _____ as a whole. Like the organization described in the court case, you do not qualify under section 501(c)(6) of the Code because based on the information submitted in your application, it seems clear that the various services offered by your organization (website banner/advertising and brochure inclusion program) are for the primary benefit of your members and not directed toward the improvement of business conditions in the _____ as a whole.

Like the organization in Automotive Electric Association v. Commissioner you publish only information related to your membership.

Applicant's Position:

Your letter dated _____ outlines the position of your organization with regard to qualification for tax exemption under section 501(c)(6) of the Code. You indicated the _____ was formed for the primary purpose of raising the level of experience for travelers in _____. Specifically, the association objectives are to establish strict standards of quality, cleanliness, safety, security and professionalism among our members so that travelers to such _____ will receive improved service and to be provided a top quality travel experience. Membership in the association is open to all _____ establishments that meet those standards.

You letter dated _____ indicates to further support our request to be considered a 501(c)(6) entity, there are at least _____ that participate in an inspection program, have similar objectives to the _____ and also maintain a website which advertises the inspected _____. We have contacted each organization and have received responses back from: _____, _____, _____, _____, _____.

and All of these State Associations have been granted Non-Profit Status by the Internal Revenue Service.

Your letter dated . outlines the position of your organization with regard to qualification for tax exemption under section 501(c)(6) of the Code. You indicated based on IRS Guidelines, the requirements to meet the definition of a Business League are as follows:

1. No part of the net earnings will inure to the benefit of any private stockholder or individual and that it is not organized for profit or organized to engage in an activity ordinarily carried on for profit.
2. It must be primarily supported by membership dues and other income from activities substantially related to its exempt purpose.
3. The general purpose must be to improve business conditions of one or more lines of business (a line of business can be either an entire industry or all components of an entire industry).
4. Have a common business interest (operation of a trade publication primarily to benefit an entire industry is acceptable documentation of common business interest).

You believe that you have met all of the qualifications required to be classified as a 501(c)(6) organization and respectfully requested that the service reconsider our position concerning a favorable determination on your non-profit status or include appeal information in our next correspondence.

Your letter dated further outlines the position of your organization with regard to your qualification for tax exemption under section 501(c)(6) of the Code. Specifically, there are identical to yours that maintain a website publicizing their inspected inns. Therefore, you indicated you were not requesting special treatment but just consistent application of the regulations across the board.

Service Response to Applicant's Position:

Your letters dated and assert that your organization meets the requirements of section 501(c)(6) of the Code because the is open to all entities in the and the primary purpose of your organization is to improve the industry as a whole. You also assert, to further support your request to be considered a 501(c)(6) entity, there are at least non-profit that participate in an inspection program, have similar objectives to the and also maintain a website which advertises the inspected inns.

Based on the information submitted, it is our position that your organization's activities are not directed towards the improvement of the general business conditions of the industry as a whole in the but is the performance of particular services for your members and as a result, tax exemption under section 501(c)(6) is precluded

You do not meet the requirement of a business league as described under section 501(c)(6) of the Code for the following reasons:

1. Your association's principal activity is the promotion of the its member's through various advertising media such as your website, directory, etc. (References: Reg.1.501(c)(6)-1; Revenue Rulings 70-80, 76-409, 65-14, 64-315; Evanston-North Shore Board of Realtors v. The United States)
2. Only members receive the association's seal of approval even though nonmember's establishments may meet the association's strict standards of quality. Although membership in your association is open to all that meet your standards, each member must qualify for admission and pay annual dues to receive your approval. (References: Reg.1.501(c)(6)-1; Revenue Ruling 67-77, 70-187; Evanston-North Shore Board of Realtors v. The United States; Builders' Exchange of Texas, Inc. v. Commissioner)
3. The inspection program (seal of approval) is promoted by your organization in a way that is intended to give your members a competitive advantage over others in the same industry by extolling the superior quality of your member's establishments. (References: Reg.1.501(c)(6)-1; Revenue Rulings 67-77, 70-187)

In our letter dated August 21, 2003 we asked your organization if it would alter its activities by doing the following:

1. Promote all that pass your inspection test regardless of whether the organization is a member.
2. Eliminate the features of your website and brochure that advertises your member's establishments.

These steps would clearly show that your organization's goal was to benefit the industry as a whole and not perform particular services for your membership. You declined to alter your activities.

You have asserted that the primary purpose of your organization is raising the level of experience for travelers in However, the primary purpose of an organization is determined by its' primary activity (amount of time & money spent). Based on the information submitted in your application, substantially all of your organization's time and money is primarily spent on marketing and promoting your members through a

website banner/advertising program, and a brochure inclusion/directory program, thereby constituting your primary activity.

Conclusion:

Based on the facts presented above, we hold that your organization does not meet the requirements for tax exemption under section 501(c)(6) of the Code.

Based on the facts that you have provided in your application for recognition of exemption, we are not able to conclude that your activities are directed to the improvement of business conditions of the _____ as a whole as distinguished from the performance of particular services for individual persons. Even though your organization establishes strict standards of quality, cleanliness, safety, security and professionalism among your members so that travelers to such _____ will receive improved service and be provided a top quality travel experience, you cannot qualify for exemption because your primary activity is the performance of particular services for members of your organization.

Accordingly, you do not qualify for exemption under section 501(c)(6) of the Code because you do not meet the proscriptions in Sections 1.501(c)(6)-1 of the Income Tax Regulations.

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

20044042 E

Case Number
203149063

Date of Latest Determination Letter
Not Applicable

Employer Identification Number

Date of Proposed Adverse Action Letter
JAN 27 2004

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption under section 501(c)(6) of the Code

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective ****

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date